Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-1251

MICHAEL FRANK RENARD,

*Petitioner,*

—vs.—

THE STATE OF NEVADA

*Respondent.*

**ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA**

# RESPONDENT'S BRIEF IN OPPOSITION

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The respondent, by and through Daniel M. Seaton, Chief Deputy District Attorney for Clark County, State of Nevada, respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the Supreme Court of the State of Nevada in the case of Michael Frank Renard v. State of Nevada, Case No. 9831, 94 Nev., Advance Opinion No. 109, 580 P.2d 470 (1978).

## STATEMENT OF THE CASE

The transcript of the sentencing procedure on May 31, 1977, reveals that

the judge was presented with a presentence report, defense witness testimony and argument of defense counsel. The State stood silent. There was no indication of any "hidden motive" in the sentencing. The defendant was placed on notice of the possibility of incarceration at the time he entered a guilty plea to the crime of ATTEMPT COERCION on March 22, 1977. At that time the deputy district attorney stated, "The Court may in fact find this defendant is an unsuitable candidate for probation..." The defendant entered his guilty plea with that knowledge.

The defendant did not request reasons from the trial court with regard to sentencing or raise an objection for the lack of specific reasons.

REASONS WHY THE WRIT SHOULD BE DENIED

1. Neither the decision below nor the record raises any violation of due process.

The sole issue is whether due process has been violated by the trial court's failure to recite reasons for the sentence imposed. The courts have held in the absence of specific statutory directive, that, "while as a matter of public policy such a requirement might be thought desirable, we do not find that it is constitutionally dictated." Walsh v. Picard, 446 F.2d 1209, 1212 (1st. Cir.)(1971); United States v. Rosner, 549 F.2d 259, 264 (2nd Cir.)(1977); United States v. Velazquez, 482 F.2d 139 (2nd Cir.)(1973).

Indeed, it is apparent from petitioner's own reasoning that he is asking this Court to embark on a course of policy



change that is not dictated by the Constitution.

2. There is no conflict of decisions among the various courts.

The petitioner has failed to establish that there are conflicting opinions that require settling by this Court.

3. The Court below followed long established policy.

"[i]t is an accepted principle that a ... trial judge has wide discretion in determining what sentence to impose on a convicted person." United States v. Johnson, 507 F.2d 826, 829 (7th Cir. 1974). A number of cases have held that a sentence imposed within statutory limits is generally not subject to review. United States v. Tucker, 404 U.S. 443 (1972); United States s. See, 505 F.2d 845, 857 (9th Cir. 1974), cert. denied sub. nom Gordon v. United States, 420 U.S. 992 (1975).

This Court has held that, "stare decisis is still a powerful force in [its] jurisprudence", United States v. Maine, 420 U.S. 515, 527 S.Ct. 1155 (1975). "One who seeks to overcome the principle of stare decisis, should be prepared to offer compelling reasons which outweigh the public interest in the stability of legal doctrine." Ramos v. Beauregard, Inc., 423 F.2d 916, 917 (1st Cir.), cert. denied, 400 U.S. 865, 91 S.Ct. 101 (1970).

It is difficult to find any compelling reasons for this Court to review a long settled policy in the sentencing structure in the appellant's petition. The appellant

recognizes that he is asking this Court to venture into an area not dictated by existing law or the Constitution. The first paragraph of his reasons make that evident. The appellant fails to demonstrate why the issue of reasons for sentencing is ripe for adjudication.

4. The question on appeal was not preserved at the trial court level.

An examination of the record fails to disclose any request for reasons or an objection for the court's lack of reasons for the sentence imposed.

## CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

Daniel M. Seaton

DANIEL M. SEATON
Chief Deputy District Attorney
Counsel for Respondent
ROBERT J. MILLER
District Attorney
HOWARD DOUGLAS CLARK
Deputy District Attorney
Clark County, Nevada



## CERTIFICATE OF MAILING

I hereby certify that on this 13th day of March, 1979, three copies of RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI were mailed, postage prepaid, to Patrick R. Doyle, Esq., 323 Las Vegas Boulevard South, Las Vegas, Nevada 89101, Counsel for the Petitioner. I further certify that all parties required to be served have been served.

Daniel M. Seaton

DANIEL M. SEATON
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